IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND NINE

PRESENT
**THE HON'BLE MR JUSTICE V.ESWARAIAH**
**and**
**THE HON'BLE MR JUSTICE SANJAY KUMAR**

**WRIT APPEAL NO : 369 of 2003**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated _____ in WP NO : 15673 OF 2001 on the file of the High Court.)

Between:

**..... APPELLANT**

AND

**.....RESPONDENT**

**Counsel for the Appellant:MR.V.NARASIMHA GOUD**

**Counsel for the Respondent No.: GP FOR LABOUR**

**WRIT APPEAL NO : 1149 of 2005**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/01/2003 in WP NO : 15673 OF 2001 on the file of the High Court.)

Between:

The Depot Manager, A.P.S.R.T.C.,
Mahabubabad Bus Depot, Mahabubabad, Warangal District.

**..... APPELLANT**

AND

1 K. Joseph, S/o.John,
Mahabubabad, Depot, R/o. Malipuram (V & Post),
Thirumalagiri, Nalgonda District.
2 The Industrial Tribunal-cum- Labour Court at Warangal.

**.....RESPONDENT(S)**

**Counsel for the Appellant:SMT.P.RAJANI REDDY**

**Counsel for the Respondent No.: MR.V.NARASIMHA GOUD**

**The Court made the following :**

**THE HONOURABLE SRI JUSTICE V.ESWARAIAH**
**AND**
**THE HONOURABLE SRI JUSTICE SANJAY KUMAR**

**WRIT APPEAL No.369 OF 2003**
**AND**
**WRIT APPEAL No.1149 OF 2005**

**C O M M O N J U D G M E N T**
**(Per Sri Justice V.Eswaraiah)**

These two writ appeals are filed challenging the order dated 07.01.2003 passed in W.P.No.15673 of 2001. W.A.No.369 of 2003 is filed by the workman and the other W.A.No.1149 of 2005 is filed by the employer.

The parties herein are referred to as 'the workman' and 'the employer' for the sake of convenience.

The facts of the case are that the workman was appointed as a driver on 26.12.1975 under the ex-servicemen quota and he was removed from service on 31.07.1996 by the employer. After exhausting the departmental appeal remedies, the workman raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act by filing a petition in I.D.No.38 of 1998 on the file of

the Industrial Tribunal-cum-Labour Court, Warangal, (for brevity, 'the Tribunal') whereby he sought to set aside the order of removal dated 31.07.1996 as well as to reinstate him in service with all benefits.

The Tribunal by its Award dated 05.03.2001 set aside the order or removal dated 31.07.1996 and consequently directed the employer to reinstate the workman in service, with continuity in service, back wages and all attendant benefits. The period of suspension was directed to be treated as on duty and shall be considered for all purposes.

Aggrieved by the said order, the employer filed a Writ Petition No.15673 of 2001 questioning the Award dated 05.03.2001 passed by the Tribunal and a learned Judge of this Court by order dated 07.01.2003 allowed the writ petition partly modifying the Award of the Tribunal to that of reinstatement of the workman with continuity of service and back wages to the extent of 20% only.

Aggrieved by the said order, the workman filed a Writ Appeal No.369 of 2003 whereas the employer filed a Writ Appeal No.1149 of 2005.

The learned counsel appearing for the workman submitted that the Tribunal independently and carefully considered the evidence available on record and on re-appreciation of the entire evidence it held that there was no negligence on the part of the workman for the accident that occurred on 15.03.1996 and the driver of the motor cycle was alone responsible for the accident and that the judgment of the Criminal Court in honourably acquitting the workman was taken as one of the relevant factors, but not the sole and only factor for arriving at the findings by the

Tribunal. He therefore sought that the appeal filed by the workman deserves to be allowed.

Per contra, the learned counsel appearing for the employer submitted that the Tribunal solely relied on the judgment of the Criminal Court and that it is not entitled to re-appreciate the evidence adduced in a domestic enquiry and, therefore, the Tribunal ought not to have interfered with the findings recorded in a domestic enquiry and set aside the order of removal passed against the workman. He also asserted that the appeal filed by the employer is liable to be allowed.

We have considered the entire material available on record. A perusal of the Award dated 05.03.2001 passed by the Tribunal clearly indicates that it re-appreciated the evidence adduced in a domestic enquiry. The evidence adduced in the said domestic enquiry shows that immediately on the date of the so-called accident the passengers and the conductor of the bus made an endorsement under Ex.M.1 S.R. stating that the accident occurred due to the sheer fault of the driver of the motor cycle alone and there was no mistake on the part of the driver (workman) of the bus. The statement of the driver and conductor palpably discloses that the accident occurred due to the negligence of the driver of the Hero Honda Motor Cycle and that the death of the pillion rider on the motor cycle was due to the injuries sustained by her as she fell down on the road but not due to the alleged hit by the bus. The Enquiry Officer in the domestic enquiry placed reliance on the preliminary enquiry report of the Senior Traffic Inspector, who was not an eye witness in the said accident. He did not even consider the statements of the conductor, driver and the passengers travelling in the bus who are in fact eye witnesses to the incident

and without of any application of his mind mechanically accepted the report submitted by the Senior Traffic Inspector. The statements recorded on the spot immediately after the accident occurred clearly discloses that the rider of the motorcycle was alone responsible for the accident. For the said reasons, the findings recorded by the Enquiry Officer at the culmination of domestic enquiry was hereby set aside holding that neither the passengers travelling in the bus at the relevant point of time or any other eye witnesses to the incident was examined during the domestic enquiry.

It is no doubt true that the Tribunal placed reliance upon the judgment passed by the Judicial Magistrate of First Class, Mahabubabad in C.C.No.357 of 1996 while passing the Award on the ground that after full-fledged trial only the Criminal Court acquitted the workman from the charges levelled against him. We are of the opinion that the Tribunal on re-appreciation of the evidence available on record independently came to the correct conclusion that the charges levelled against the workman were not proved and the findings of the Enquiry Officer were accordingly set aside and consequently directed the employer to reinstate the workmen in service with continuity in service and back wages.

The learned single Judge while confirming the findings of the Tribunal, erroneously made an observation that though the workman came to be acquitted by the Criminal Court, the very fact that a fatal accident occurred, the workman ought to have been much more careful and based on the said observation the payment of back wages was restricted to extent of 20% only. We are of the opinion that there is no material on record against the workman for the observation by the learned Judge that the workman ought to

have been much more careful. Both the Tribunal and the Criminal Court held that the rider of the motorcycle was alone at fault and in view of his rash and negligent driving the accident occurred and due to which the pillion rider fell down on the road and died, but she was not hit by the bus.

It is not the case of the employer that there was negligence on the part of the driver. In this context, the learned counsel appearing for the employer submitted that the charge levelled against the workman is that he had driven the vehicle in a rash and negligent manner and due to lack of anticipation, the accident occurred which ultimately caused injuries to the motorcyclist and death of the pillion rider, which amounted to misconduct. We have perused the Regulation 28 (ix)(a) of the Andhra Pradesh State Road Transport Corporation Employees (Conduct) Regulations, 1963, which reads as under:

> "28. General Provisions:
>
> Without prejudice to the generality of the forgoing regulations, the following acts or omissions shall be treated as misconduct:-
>
> i) … …
> ii) … …
> iii) … …
> iv) … …
> v) … …
> vi) … …
> vii) … …
> viii) … …
>
> ix)(a) gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both;
>
> (b) neglect of duty resulting in or likely to result in danger to the lives of employees or of their persons or both;"

We are of the opinion that Regulation 28(ix)(a) does not

cover the lack of anticipation. The statements of the conductor, driver and the passengers recorded on the spot immediately after the accident obviously discloses that there was rash and negligent act on the part of the rider of the motor cycle and there was no rash and negligent act on the part of the driver of the bus. The said Regulation contemplates the gross negligence resulting in or likely to result in serious loss to the Corporation or inconvenience to the public or both. In the instant case, we do not see any negligence on the part of the workman as rightly held by the Tribunal. The workman could not have foreseen the negligent act on the part of the motorcyclist.

The Apex Court in the case of ***MAVJI C.LAKUM V/s. CENTRAL BANK OF INDIA***[1] placing reliance on the Constitutional Bench Judgment in the case of ***WORKMEN V/s. FIRESTONE TYRE AND RUBBER Co. OF INDIA (P) LTD., (1973 SC 1227)*** held that the Tribunal is empowered to re-appreciate the evidence adduced in a domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. Therefore, we are unable to accept the contention of the learned counsel appearing for the employer that it is not open for the Tribunal to re-appreciate the evidence adduced in a domestic enquiry. Further, it is alleged on behalf of the employer that the Tribunal cannot place reliance on the judgment of the Criminal Court. In the instant case, the Tribunal has considered the judgment of the Criminal Court as one of the relevant factors, but mainly placed reliance on the re-appreciation of the evidence available in the domestic enquiry alone. The Tribunal independently considered the matter in the proper perspective and came to the correct conclusion that there

was no material before the Enquiry Officer in recording the finding that there was rash and negligent driving and lack of anticipation on the part of the workman. Therefore, the judgment relied on by the learned counsel for the employer in the case of ***DIVISIONAL CONTROLLER, G.S.R.T.C. V/s. KADARBHAI J.SUTHAR***[2] has no application to the facts of the instant case.

It is relevant to note that in the counter filed in the writ appeals, the workman specifically stated that he was unemployed since the date of his removal from service till his reinstatement. This fact has not been rebutted by the employer by way of a reply. In view of this fact, we do not see any valid reason to deny back wages to the workman.

Having due regard to the facts and circumstances of the case, we are of the considered opinion that the learned single Judge having confirmed the findings of the Tribunal ought not to have interfered with the payment of back wages. In the instant case, the workman pleaded and established that he has not been gainfully employed during the period of suspension either before the Tribunal or during the pendency of the writ petition, and therefore, there cannot be any justification in denying the payment of back wages to the workman. When the workman is not at fault and his removal from service was held to be illegal, he is certainly entitled to consequential benefits. Accordingly, the order dated 07.01.2003 passed by the learned single Judge in Writ Petition No.15673 of 2001 to the extent of denying full back wages is set aside and Writ Appeal No.369 of 2003 filed by the workman is allowed and consequently Writ Appeal No.1149 of 2005 filed by the employer is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

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**V.ESWARAIAH, J.**

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**SANJAY KUMAR, J.**

**28th APRIL, 2009.**

**PGS**

**THE HONOURABLE SRI JUSTICE**
**V.ESWARAIAH**
**AND**
**THE HONOURABLE SRI JUSTICE**
**SANJAY KUMAR**

**WRIT APPEAL No.369 OF 2003**
**AND**
**WRIT APPEAL No.1149 OF 2005**
**(Per Sri Justice V.Eswaraiah)**

**28TH APRIL, 2009**

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[1] (2009) 1 SCC (L&S) 254

[2] 2007(5) SCJ 204